



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

BETH NAGUSKY  
ACTING COMMISSIONER

To: Board of Environmental Protection

From: Kevin P. Jenssen, Hazardous Waste Enforcement Unit, Bureau of Remediation and Waste Management (BRWM)

Date: October 7, 2010

RE: Administrative Consent Agreement -  
Metal Magic Inc., Trenton, Maine

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Statutory and Regulatory Reference: The Hazardous Waste Management Rules, Chapters 850 through 857 adopted pursuant to the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. Section 1301 et seq., specifies certain requirements for the management, storage, treatment and disposal of hazardous waste.

Location: Metal Magic, Inc., Trenton, Maine

Description: Metal Magic, Inc. has entered into the attached Consent Agreement as proposed by Department staff in order to resolve violations of Maine's Hazardous Waste Management Rules. The hazardous waste violations were identified during an inspection conducted at Metal Magic, Inc. on February 18, 2009 with a follow up inspection on June 11, 2009. The violations identified include the following:

- 1) Discharge of at least 2 gallons of hazardous waste paints onto the floor of a storage trailer;
- 2) Failure to report the discharge of hazardous waste;
- 3) Discharge of diesel oil onto the ground adjacent to a 275-gallon above ground storage tank causing an area of stained soil approximately 2 feet by 2 feet in size;
- 4) Failure to remove the discharge of oil;
- 5) Failure to determine if wastes generated are hazardous, including approximately 170 containers, ranging in size from 1-pint to 5-gallons, of waste paints and paint-related materials;
- 6) Failure to store hazardous waste in containers which are not leaking, bulging, or rusted;

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17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
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106 HOGAN ROAD, SUITE 6  
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(207) 941-4570 FAX: (207) 941-4584

PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
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PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04679-2094  
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- 7) Failure to store containers of hazardous waste paint and other paint-related waste on a firm, impervious, and entire working surface (such as asphalt or concrete) which is constructed to prevent spillage from leaving the area; and
- 8) Failure to keep a container of hazardous waste acid closed except when adding or removing waste.

To resolve these violations, Metal Magic, Inc. has come into compliance with and has agreed to comply with the hazardous waste management laws and rules. In addition, Metal Magic Inc. has agreed to pay to the Maine Hazardous Waste Fund a penalty of one thousand dollars (\$1,000.00) as specified in the Agreement.

The Maine Hazardous Waste Fund is established by statute to provide the Department with the capability for prompt and effective response to spills and unlicensed discharges of hazardous waste, and for the inspection or supervision of hazardous waste handlers and related hazardous waste activities. Pursuant to statute, all fees, penalties, interest, and other charges relative to those activities must be credited to the Maine Hazardous Waste Fund.

A significantly higher penalty of \$13,450 was originally assessed in this case based upon the type of violations involved, the amount of waste involved, and the relative extent of deviation from the requirements. Aggravating factors considered in the penalty included the discharge of hazardous waste paint to the floor of a storage trailer, the failure to store containers of hazardous waste on a firm working surface, accumulation of approximately 170 containers of waste paints or paint-related materials, discharge of oil to the ground, and failure to keep containers of hazardous waste closed between adding and removing waste. Mitigating factors considered in the penalty included Metal Magic Inc.'s cooperation during the enforcement process. However, Metal Magic, Inc. claimed that it did not have the ability to pay the assessed penalty of \$13,450. As a result of that claim, the Department reviewed the most recent 5 years of income tax returns for the company and performed an ability-to-pay computer analysis of the company's financial status. The computer analysis indicated that Metal Magic, Inc. does not have the finances available to pay the originally assessed penalty, but that it can afford to pay up to \$1,000. As a result of that computer analysis, the penalty has been revised to attain a resolution of the violations and collect a penalty of an amount indicated by the ability-to-pay analysis.

Department Recommendation:

The Department recommends that the Board accept the Consent Agreement as part of its Consent Agenda to resolve the issues addressed.

Staff Contact persons:

Kevin P. Jenssen, Hazardous Waste Enforcement Unit, BRWM

Estimated time of presentation: No presentation; Consent agenda item



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

IN THE MATTER OF:

METAL MAGIC, INC.	)	ADMINISTRATIVE CONSENT
979 BAR HARBOR ROAD, TRENTON	)	AGREEMENT
HANCOCK COUNTY, MAINE	)	(38 M.R.S.A. § 347-A)
HAZARDOUS WASTE ACTIVITIES	)	

This Agreement, by and among Metal Magic, Inc, ("Metal Magic") the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General, is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

THE PARTIES AGREE AS FOLLOWS:

1. Metal Magic, Inc. is a Maine corporation that operates a metal fabrication and metal finishing business with its principal location at 979 Bar Harbor Road in Trenton, Maine. Edward M. Libitzki is the President of the corporation.
2. The violations described herein occurred at 979 Bar Harbor Road in Trenton, Maine.
3. Metal Magic is a generator of hazardous waste including, but not limited to, waste paint and paint related materials. As a result, Metal Magic is subject to Maine's *Hazardous Waste, Septage and Solid Waste Management Act* ("Act") 38 M.R.S.A. §§ 1301 through 1319-Y and the Department's *Hazardous Waste Management Rules* 06-096 CMR 850 - 857 ("Rules"). In addition, on April 13, 2001, Metal Magic notified the U.S. Environmental Protection Agency ("US EPA") of its regulated waste activity and was assigned the US EPA hazardous waste generator identification number MER000500314.
4. On November 28, 2000, Metal Magic was inspected for compliance with the Act and the Rules. As a result of the inspection, violations of the Act and the Rules were discovered. On March 15, 2001 a Notice of Violation and Enforcement Intent was issued for hazardous waste violations. On November 19, 2001, Metal Magic entered into an Administrative Consent Agreement and Enforcement Order (ACAEO) and paid a penalty of \$6,000.00 to resolve the violations.
5. On February 18, 2009, Department staff conducted an inspection of Metal Magic at the location described in Paragraph 2 of this Agreement to assess compliance with the hazardous waste management standards of the Act and Rules. On June 11, 2009, Department staff conducted a follow up inspection to inventory all of the hazardous waste paints, paint related materials, acidic waste and waste oil at the site. The inspections revealed the following violations:

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BANGOR, MAINE 04401  
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PORTLAND  
312 CANCO ROAD  
PORTLAND, MAINE 04103  
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PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, MAINE 04769-2094  
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IN THE MATTER OF:

METAL MAGIC, INC.  
979 BAR HARBOR ROAD, TRENTON  
HANCOCK COUNTY, MAINE  
HAZARDOUS WASTE ACTIVITY

) ADMINISTRATIVE CONSENT  
) AGREEMENT  
) (38 M.R.S.A. § 347-A)  
)

- A. Discharge of a hazardous matter and hazardous waste into or upon any waters of the State, or into or upon any land within the State's territorial boundaries or into the ambient air, in violation of the Act, 38 M.R.S.A., §§ 1317-A and 1306(3);

The contents of two (2) badly corroded one (1) gallon cans of hazardous waste paint were discharged onto the wooden flooring inside a storage trailer marked by the Department as MEDEP061109#1.

- B. Failure to report a discharge of hazardous matter, in violation of the Act, 38 M.R.S.A. § 1318-B(1);

Metal Magic failed to report the discharge of hazardous matter referenced in Paragraph A above.

- C. Discharge of oil into or upon any lands adjacent to, on, or over any ground water, stream, or surface water drainage of the State, in violation of the Act, 38 M.R.S.A., § 543;

Metal Magic discharged off road diesel onto the ground adjacent to a 275-gallon storage tank located behind the main building. The discharge caused an oil stain on the soil measuring approximately two (2) foot by two (2) foot in size.

- D. Failure to remove a discharge of oil, in violation of the Act, 38 M.R.S.A., § 548;

The discharge noted in paragraph C above was not cleaned up or removed to the Department's satisfaction.

- E. Failure to determine if wastes generated are hazardous, in violation of the Rules, 06-096 CMR 851(5);

Metal Magic failed to make the determination of whether waste is hazardous on the following types of waste. This is a repeat of a similar violation cited in the November 19, 2001 ACAEO;

- (1) Approximately one hundred and seventy (170) containers, ranging in size from one (1) pint to five (5) gallons, of waste paints and paint related materials stored in the storage trailer marked MEDEP061109#1, located directly across from the large sandblast bay;
- (2) A five (5)-gallon container labeled as a flammable material containing an unknown waste, marked by the Department as MEDEP061109A located to the left side of the trailer marked by the Department as MEDEP061109#3.

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METAL MAGIC, INC.	)	ADMINISTRATIVE CONSENT
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HANCOCK COUNTY, MAINE	)	(38 M.R.S.A. § 347-A)
HAZARDOUS WASTE ACTIVITY	)	

- (3) One (1) 5-gallon container of waste acid (pH ~ 1) (marked MEDEP061109B) stored under storage trailer marked MEDEP061109#4;
- (4) One (1) 1-gallon container of waste polyurethane (marked MEDEP061109M) and one (1) 5-gallon container of waste thinner (marked MEDPEP061109N) and one (1) 55-gallon drum (marked DEP10) of unknown material located behind the main building.

- F. Failure to store hazardous waste in containers which are not leaking, bulging, or rusted, in violation of the Rules, 06-096 CMR 851(13)(C)(3);

Metal Magic had stored waste paints in at least two (2) corroded gallon containers which leaked to the floor.

- G. Failure to store containers of hazardous waste on a firm, impervious, and entire working surface (such as asphalt or concrete) which is constructed to prevent spillage from leaving the area, in violation of the Rules, 06-096 CMR 851(13)(B)(1). This is a repeat of a similar violation cited in the November 19, 2001 ACAEO;

Metal Magic stored containers of waste paints and paint related materials under a storage trailer on the ground, where the containers were not on a firm, impervious and entire working surface to prevent spillage from leaving the area or reaching the soil.

- H. Failure to keep containers of hazardous waste (acidic waste) closed except when adding or removing waste, in violation of the Rules, 06-096 CMR 851(8)(B)(2) which incorporates by reference 40 CFR 265.173(a) (1988);

Metal Magic failed to keep closed one 5-gallon container, marked by the Department as MEDEP061109B that contained an acidic unknown waste with a pH less than 2. This is a repeat of a similar violation cited in the November 19, 2001 ACAEO.

6. On August 27, 2009, the Department issued a Notice of Violation (NOV) to Metal Magic for the activities described in Paragraph 5 of this Agreement, in accordance with 38 M.R.S.A. § 347-A(1)(B). In the NOV, the Department requested that Metal Magic, Inc. perform corrective actions and respond to the Department in writing within thirty (30) days describing the corrective actions undertaken to address each of the violations cited. Specific corrective actions requested by the Department include, but are not limited to, reporting discharges of hazardous matter to the Department immediately upon discovery;

IN THE MATTER OF:

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HAZARDOUS WASTE ACTIVITY	)	

immediately removing discharges of oil; determining if waste generated are hazardous; storing containers of hazardous waste on firm working surfaces; submitting in writing the results of the inventory required in the follow up letter of June 26, 2009; and scheduling for disposal the hazardous waste in the inventory previously noted.

7. On September 4, 2009, Metal Magic submitted to the Department a written response to the NOV, indicating the corrective actions undertaken to address the violations. The corrective actions included, but are not limited to, conducting hazardous waste determinations for the waste listed in Paragraph 5(E) above and arranging for the licensed disposal of 1,350 pounds of hazardous waste paint and paint related materials and 50 pounds of hazardous waste acid. In addition, Metal Magic arranged for the licensed disposal of 77 pounds of non-hazardous waste latex paints.
8. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection ("Board"), which is part of the Department.
9. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
10. To resolve the violations referenced in Paragraph 5 of this Agreement, Metal Magic, Inc. agrees to:
  - A. Within thirty (30) days of Metal Magic's signature of this agreement, submit documentation and certification of the clean up and disposal of the oil-contaminated soil beneath the 275-gallon oil storage tank referenced in Paragraph 5(C) of this Agreement; and
  - B. Pay to the Treasurer, State of Maine, c/o Hazardous Waste Fund, a civil monetary penalty of One Thousand Dollars (\$1,000.00) in five (5) payments. The first payment shall be in the amount of Two Hundred Dollars (\$200.00) and is due upon Metal Magic's signature of this Agreement. Four (4) additional payments shall be in the amount of Two Hundred Dollars (\$200.00) and shall be due on or before the first day of each month for four (4) consecutive months beginning on October 1, 2010. In the event of any default in the above payment schedule, including failure to make payment within seven (7) days of the due date, a late fee of Fifty Dollars (\$50.00) per week calculated from the due date of the missed payment shall be added to the balance due and shall accrue weekly until any missed payment(s) and late fee(s) are paid in full. In addition, if any payment is more than seven (7) days late, the full outstanding balance of the unpaid penalty is immediately due and payable upon demand by the Department.



IN THE MATTER OF:

METAL MAGIC, INC.  
979 BAR HARBOR ROAD, TRENTON  
HANCOCK COUNTY, MAINE  
HAZARDOUS WASTE ACTIVITY

) ADMINISTRATIVE CONSENT  
) AGREEMENT  
) (38 M.R.S.A. § 347-A)  
)

11. The Department and Office of the Attorney General grant a release of their causes of action against Metal Magic for the specific violations listed in Paragraph 5 of this Agreement on the express condition that all actions listed in Paragraph 10 of this Agreement are completed in accordance with the express terms and conditions of this Agreement, except that no release is granted for any contamination of surface waters, ground waters, soils, sediment or ambient air as a result of the violations set forth in this Agreement. This Agreement shall not prohibit the Department from requiring additional corrective measures or other remedial actions if the Department determines that such action is necessary to protect public health, safety, or the environment. This limited release shall not become effective until all requirements of this Agreement are satisfied.
12. Non-compliance with this Agreement voids the release set forth in Paragraph 11 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S.A. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.
13. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, rules, and orders including but not limited to licensing requirements.
14. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, successors, and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of five (5) pages:

METAL MAGIC INC.

BY: \_\_\_\_\_

Edward Libitzki, President

DATE: \_\_\_\_\_

9/1/10

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_

Susan M. Lessard, Chair

DATE: \_\_\_\_\_

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_

Peter LaFond, Assistant Attorney General

DATE: \_\_\_\_\_